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In The
Supreme Court of the United States
October Term, 1987

TRUSTEES FOR ALASKA, *et al., Cross-Petitioners,*

v.

STATE OF ALASKA, *et al., Cross-Respondents,*

and

ALASKA MINERS ASSOCIATION, *Cross-Respondent,*

and

FAIRBANKS NORTH STAR BOROUGH, *Cross-Respondent,*

and

JOSEPH VOGLER, *Cross-Respondent.*

On Petitions for Writ of Certiorari to the Alaska Supreme Court

FAIRBANKS NORTH STAR BOROUGH'S RESPONSE TO CROSS-PETITION FOR WRIT OF CERTIORARI TO THE ALASKA SUPREME COURT

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES CITED ii

STATUTE INVOLVED 1

SUMMARY OF ARGUMENT 2

ARGUMENT 2

I. SECTION 6(i) REFERS ONLY TO "MINERAL LANDS" AND THE MINERAL CHARACTER OF LAND IS DETERMINED AT THE TIME OF STATE SELECTION ONLY 2

A. Traditional Federal Law Holds That the Date of Mineral Characterization of Land Is the Date of State Selection 4

B. Congress Intended the Mineral Land Characterization to Relate to the Time of State Selection 5

C. Historical Background of the School Lands Act Supports the Interpretation That Section 6(i) Applies Only to Mineral Lands 6

D. The State Derives All the Revenue Necessary and Reasonable from All State Lands 8

CONCLUSION 9

TABLE OF AUTHORITIES CITED

Page

CASES

Carey v. Donohue, 240 U.S. 430 (1916) 6

Colorado Coal and Iron Co. v. United States, 123 U.S. 307 (1887) 4

Deffeback v. Hawke, 115 U.S. 392 (1885) 4

First Charter Financial Corp. v. United States, 669 F.2d 1348 (9th Cir. 1982) 3

Girouard v. United States, 328 U.S. 61 (1946) 6

Shaw v. Kellogg, 170 U.S. 312 (1898) 4

Wyoming v. United States, 255 U.S. 489 (1921) 4, 5, 6, 7

STATUTES

Alaska Statehood Act, Section 6(i), 48 U.S.C. prec. § 21 ..... *passim*

Alaska Stat. § 43.65.010 9

School Lands Act of 1927, 43 U.S.C. § 870 7

MISCELLANEOUS

Hawaii-Alaska Statehood Act, 84th Cong. 1st Sess. 332 (Feb. 15, 1955) 6

S. Rep. No. 603, 69th Cong. 1st Sess. 5 (1926) 7

S. Rep. No. 1028, 83d Cong. 2d Sess. subsection k — p. 32 (1954) 5

Sutherland, Statutory Construction § 45.12 (4th ed. 1984) 5

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STATUTE INVOLVED

Section 6(i) of the Alaska Statehood Act, 48 U.S.C. prec. § 21 declares:

> "All grants made or confirmed under this Act shall include mineral deposits. The grants of mineral lands to the State of Alaska under subsections (a) and (b) of this section are made upon the express condition that all sales, grants, deeds, or patents for any of the mineral lands so granted shall be subject to and contain a reservation to the State of all of the minerals in the lands so sold, granted, deeded, or patented, together with the right to prospect for, mine, and

remove the same. Mineral deposits in such lands shall be subject to lease by the State as the State legislature may direct: *Provided*, That any lands or minerals hereafter disposed of contrary to the provisions of this section shall be forfeited to the United States by appropriate proceedings instituted by the Attorney General for that purpose in the United States District Court for the District of Alaska." (Emphasis added.)

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SUMMARY OF ARGUMENT

The term "mineral lands" as found in Section 6(i) of the Alaska Statehood Act follows the well-settled traditional and historical definition of that term. As such it refers to only those lands known to have been of mineral character at the time the state selected the subject land. There is no evidence that Congress intended a different result or that this definition thwarts the will of Congress. There is no reason for this Court to consider upsetting this traditional definition.

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ARGUMENT

I

SECTION 6(i) REFERS ONLY TO "MINERAL LANDS" AND THE MINERAL CHARACTER OF LAND IS DETERMINED AT THE TIME OF STATE SELECTION ONLY

The State of Alaska is required by Section 6(i) of its statehood act to lease, rather than utilize some other

form of contract, minerals on certain state lands. The cross-petition questions whether or not Section 6(i)'s leasing requirement applies to minerals found on *all* state lands rather than just those minerals found on "*mineral lands,*" which by traditional definition are those lands known to have been of mineral character at the time the state selected the land for its own inventory.

Cross-petitioners, Trustees for Alaska (Trustees), have never advanced any compelling reasons why this Court should upset the well settled definition of mineral lands. While the Trustees did manage to persuade the Alaska Supreme Court that Section 6(i) requires leasing on all of the state's mineral lands, the court below correctly confined its ruling to mineral lands only.

Trustees are incorrect in claiming that the Section 6(i) reservation requirements apply to *all* state lands. The Act's leasing requirement states that "[m]ineral deposits in such lands shall be subject to lease." By the Act's plain language, "such lands" can refer only to the "mineral lands" of the preceding sentence.[1]

Traditionally, "mineral lands" as used in statehood acts and land grants is a term that has been very narrowly defined. It refers to only those lands actually known to have been of mineral character at the time of state selection. There is no reason for the Court to re-evaluate this traditional definition.

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[1] *See, e.g., First Charter Financial Corp. v. United States,* 669 F.2d 1348, 1350 (9th Cir. 1982) (doctrine of last antecedent in statutory construction).

A. Traditional Federal Law Holds That the Date of Mineral Characterization of Land Is the Date of State Selection

Because the original lower 48 states' statehood school land grants gave to the states only nonmineral lands, it was necessary to segregate mineral from nonmineral lands. To do this a date certain of mineral characterization had to be set. Otherwise, title uncertainty would arise on "nonmineral" land later found to contain minerals. This reference date for determining mineral character was established to be the date of state selection. *Wyoming v. United States*, 255 U.S. 489 (1921); *Shaw v. Kellogg*, 170 U.S. 312, 332 (1898). In *Wyoming* this Court relied upon the holding in *Colorado Coal and Iron Co. v. United States*, 123 U.S. 307, 328 (1887), that "[a] change in the conditions occurring subsequently to the sale [or in Wyoming and here the grant], whereby new discoveries are made, or by means whereof it may become profitable to work the veins as mines, cannot affect the title as it passed at the time of the sale." *Colorado Coal*, 123 U.S. at 328; *Wyoming*, 255 U.S. at 498. *See also Deffeback v. Hawke*, 115 U.S. 392, 404-05 (1885).

This traditional standard follows from practical requirements which are equally applicable today. Because Section 6(i) of Alaska's Statehood Act sets limits on the disposition of mineral lands, a potential purchaser of state land must know whether or not the land is mineral and subject to the restrictions. This understanding must remain constant for security of title.

For these reasons it is clear that the alienation restrictions of Section 6(i) apply only to mineral lands

defined as only those lands known to have been of mineral character at the time of state selection.

B. Congress Intended the Mineral Land Characterization to Relate to the Time of State Selection

Congress must have been aware of the traditional meaning of mineral lands when it enacted Section 6(i). *See* Sutherland, *Statutory Construction* § 45.12 (4th ed. 1984) ("legislative language will be interpreted on the assumption that the Legislature was aware of existing . . . judicial decisions"). Congress, in reconciling the need for a state to preserve its mineral resources against the need for mineral development and certainty of title in non-mineral lands, understood that mineral character is established as of the date of selection.

References to mineral lands in congressional considerations of Alaska statehood refer to a characterization at time of selection. For example, in S. Rep. No. 1028, 83d Cong. 2d Sess. subsection k p. 32 (1954), it is reported that the new state shall acquire mineral deposits and "[t]hus, the fact the lands desired by the State are *known or believed to be valuable for minerals* will not preclude the State from exercising its right of selection." *Id.* (emphasis added). Thus, the report refers to a knowledge or belief at the time a state selects that land.

Despite the urging of the Trustees, there is no indication that Congress intended to upset the long line of federal holding that the date of characterization of "mineral lands" in state land grants is the date of state selection. *See, e.g., Wyoming v. United States*, 255 U.S. at 489. Absent an explicit congressional repeal of a rule

of law such a repeal should not be presumed. *See Girouard v. United States,* 328 U.S. 61, 69 (1946), and *Carey v. Donohue,* 240 U.S. 430, 437 (1916).

Trustees make much of the decision by Congress not to require a preselection survey of selected lands for mineral character. Cross-petition at 16. The only reason this was omitted was to facilitate the speedy acquisition of lands by the state. As Delegate Bartlett stated at hearings before the House Committee on Interior and Insular Affairs on the Hawaii-Alaska Statehood Act, 84th Cong. 1st Sess. 332 (Feb. 15, 1955), Alaskans "were somewhat apprehensive about the rapidity with which lands would move to the new State if the requirement remained in that the mineral character of all land would have to be determined in advance." Finally, the only reason that Bartlett did not think the language calling for preselection characterization was "surplusage" was because it was perceived that the preselection survey of mineral character was a substantive requirement. *Id.*

For these reasons there is no justification to define mineral lands as any lands other than those known to be of mineral character at the time of state selection. All other lands are, by traditional tests of this Court, not mineral land and not subject to Section 6(i) requirements. *See, e.g., Wyoming, supra.*

C. Historical Background of the School Lands Act Supports the Interpretation That Section 6(i) Applies Only to Mineral Lands

The western states originally were given only nonmineral lands by Congress upon attaining statehood. The practice of segregating mineral from nonmineral lands for

purposes of state selections eventually led to great confusion and title uncertainty. As mentioned in Part A, *supra*, it was unclear what the effect was after statehood of finding minerals on lands originally believed to be of nonmineral character at the time of selection. Ultimately, this Court held that the federal statehood grants of nonmineral land referred only to land not known to be of mineral character *at statehood*. *Wyoming, supra*. Thus, a new problem arose: what lands were known to be of mineral character at statehood?

To remedy these disputes Congress passed the School Lands Act of 1927, 43 U.S.C. § 870, which granted to the states the mineral rights to the previously selected "nonmineral" lands. The School Lands Act also states that such mineral rights could only be leased.

The principal reason for the grant of mineral lands under the School Lands Act was to clear land titles which had fallen into a state of virtual anarchy under the prior system of segregating mineral from nonmineral lands in state land grants. *See, e.g.*, Report of Senate Committee on Public Lands and Surveys, S. Rep. No. 603, 69th Cong. 1st Sess. 5 (1926). Thus, this Act dealing with mineral lands can be seen to be a clear precursor of Section 6(i). And just as the leasing requirement of the School Lands Act applies only to minerals granted in the 1927 Act, Section 6(i)'s leasing requirement applies only to mineral lands.[2] The one major difference between Section 6(i) and

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[2] In fact, it is arguable that the leasing requirement of Section 6(i), by its plain language, refers to an even smaller subset of mineral lands, namely those for which the surface estate has previously been, in the words of Section 6(i), "sold, granted, deeded, or patented."

the School Lands Act is that Section 6(i) omits all references to "rents or royalties."

Simply put, the Alaska Supreme Court's interpretation is correct and well established, and the Trustees have made no significant arguments why this Court should grant review.

D. The State Derives All the Revenue Necessary and Reasonable from All State Lands

The Trustees argue that this Court should redefine the term "mineral lands" so that all mines on all state lands can be subject to the rental or royalty requirement.[3] Trustees imply that the state will be beggared if it is not forced by this Court to impose rentals or royalties on all such lands. This is untrue.

The legislature at any time may impose whatever rents and/or royalties on whatever state lands it wishes. Up to present time it has declined to do so, apparently because the legislature believes a strong minerals industry is preferable to one overburdened by governmental costs.

Trustees' assertion that the state "will receive little revenue at all" from nonmineral lands, Trustees' cross-petition at 13, is also highly misleading. The state already has in place a mineral license production tax on all minerals produced in the state, no matter what type of land is

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[3] Although the Trustees claim the Alaska Supreme Court required rents *and* royalties from mineral lands, the court actually said rents *or* royalties.

involved. *See* Alaska Stat. § 43.65.010. This tax is, for all practical purposes, equivalent to a graduated royalty on net mineral revenues.

This Court should not be misled by Trustees to believe that the State of Alaska will lose any revenues just because a certain scheme of leasing is not required on nonmineral state lands as that term has been traditionally defined. The state legislature, when and if it feels the need, can obtain any sort of revenues it likes. However, this matter is one uniquely appropriate for the deliberations of the people and Legislature of Alaska, not the state or federal court systems.

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CONCLUSION

In passing the statehood act, Congress was aware that Alaska would receive certain mineral lands and provisions were made to prevent the state from unwisely giving those mineral lands away. Congress did not redefine the definition of mineral lands or mineral character. Nor is there any threat that the state will plunge into poverty for failure to charge rents or royalties on all lands, rather than on just mineral lands as required by the court below. This

Court should deny Trustees' cross-petition for writ of certiorari and allow the state to continue to obtain revenues of minerals according to its own discretion.

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